

## II. REMARKS

Claims 1-25 are pending in this application. By this amendment, claims 1-5, 8-10, 13-17 and 20-23 have been amended and claims 26-29 have been added. These amendments are being made to facilitate early allowance of the presently claimed subject matter. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

Entry of this Amendment is proper under 37 C.F.R. 1.116(b) because the Amendment: (a) places the application in condition for allowance as discussed below; (b) does not raise any new issues requiring further search and/or consideration; and (c) places the application in better form for appeal. Accordingly, Applicants respectfully request entry of this Amendment.

In the Office Action, claims 1-6, 8-10, 12-17, 19-23, and 25 are rejected under 35 U.S.C. §102(e) as being anticipated by Kitaoka et al. (US patent no 6,425,889), hereafter "Kitaoka." Claims 7, 11, 18, and 24 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kitaoka. This rejection is respectfully traversed for the reasons stated below.

### A. REJECTION OF CLAIMS 1-6, 8-10, 12-17, 19-23, AND 25 UNDER 35 U.S.C. § 102(b)

In the Office Action, claims 1-6, 8-10, 12-17, 19-23, and 25 are rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Kitaoka. In a recent non-precedential opinion, the Court of Appeals for the Federal Circuit explained that "[a] determination that a claim is

anticipated under 35 U.S.C. § 102 involves two analytical steps." *In re Simpson*, 2003 U.S. App. LEXIS 7278, \*7 (Fed. Cir. 2003). The claim language first must be interpreted, and then each element of the claim is compared to a prior art reference. *Id.* Because the Office has erred in comparing the present invention to the prior art reference, Applicants respectfully request withdrawal of this rejection.

Applicants respectfully submit that Kitaoka fails to disclose an incontinence article having a bumper extending along an entire edge of a top portion of at least one of the front portion and the rear portion. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); see MPEP § 2131, p. 2100-70. First, the Office erroneously equates the foamed member in Kitaoka with the bumper as included in the present invention. The Kitaoka foamed member "...lies on an upper portion of the core..." of the diaper. Col 2, line 57-58. As shown in FIG. 1 and FIG. 4, the core of the Kitaoka diaper does not extend to the longitudinally outer edge of the diaper and also does not extend to the transversely opposite side edges of the diaper. This is further borne out in the Kitaoka specification, where the liquid-resistant sheet, not the foamed member containing core, is described as extending to the longitudinally outer edge of the diaper. Col. 2, line 48-52, 58. Furthermore, it is the liquid-resistant sheet that is specified as "...having a width larger than a width of the core..." and extending to the opposite side edges, i.e. the entire width of the diaper. Col. 2, line 47-52. Therefore, because the core of the Kitaoka diaper does not extend either the length or width of the diaper, the foamed member of Kitaoka, which lies on the core, cannot be located at the top portion of the diaper or extend along the entire edge of the

diaper. Conversely, the bumper as included in the present invention extends along an entire edge of a top portion of at least one of the front portion and the rear portion of the incontinence article. Thus, the bumper as included in the current invention is both wider than and further toward the edge of the diaper than the Kitaoka foamed member. For the above stated reasons, the foamed member as taught in Kitaoka is not equivalent to the bumper as included in the present invention. Accordingly, Applicants request that the rejection be withdrawn.

With further respect to independent claims 8 and 20 and dependent claim 2, Kitaoka does not disclose a front guard extending vertically from the front portion to a middle chest area of a user. The three main parts of the Kitaoka diaper are the front waist region, the rear waist region, and the crotch region. Col. 2, line 43-44. The description of the front part of the diaper as being the front waist region indicates that the Kitaoka diaper is designed to be worn at or about the waist of the user. Conversely the front guard as included in the present invention extends vertically from the front portion to a middle chest area of a user. Thus, the Kitaoka diaper that is worn about the waist of the user is not equivalent to the front guard extending vertically from the front portion to a middle chest area of a user as included in the present invention. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With further respect to independent claims 8 and 14 and dependent claim 3, Kitaoka does not disclose a back guard extending vertically from the back portion to a middle back area of a user. The three main parts of the Kitaoka diaper are the front waist region, the rear waist region, and the crotch region. Col. 2, line 43-44. The description of the rear part of the diaper as the rear waist region indicates that the Kitaoka diaper is designed to be worn at or about the waist of the user. Conversely the back guard as included in the present invention extends vertically from the

back portion to a middle back area of a user. Thus, the Kitaoka diaper that is worn about the waist of the user is not equivalent to the back guard extending vertically from the back portion to a middle chest area of a user as included in the present invention. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

**B. REJECTION OF CLAIMS 7, 11, 18 and 24 UNDER 35 U.S.C. § 103(a)**


In the Office Action, claims 7, 11, 18 and 24 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kitaoka. Applicants herein incorporate the arguments presented above with respect to independent claims 1, 8, 14 and 20 from which claims 7, 11, 18 and 24 depend. In particular, since Roe does not teach all the claim limitations of claim 1, Roe also fails to teach all the limitations of the dependent claims 7, 11, 18 and 24. As a result, Applicants respectfully request withdrawal of this rejection.

### III. CONCLUSION

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

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